

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, September 14, 2011, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: Tom Day
Walter Schmidt
Nancy Bonniwell
Richard Bayer
Linda Weber

BOARD MEMBERS ABSENT: Robert Bartholomew

SECRETARY TO THE BOARD: Nancy M. Bonniwell

OTHERS PRESENT: Town of Merton Board of Adjustment
Peggy Tilley, Senior Land Use Specialist
Mary Ann Hyman, BA11:033, owner
Patricia Cataldo, BA11:034, owner
Kenneth P. Riesch, BA11:032, owner
Kent Johnson, BA11:032 and BA11:033, petitioner
Arleen & Martin Komondoros, BA11:027, owners
Jeno Cataldo, BA11:034, owner's representative (son)

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Schmidt *I make a motion to approve the Summary of the Meeting of August 10, 2011, with the removal of the word "unanimously" on Page 5.*

The motion was seconded by Mr. Bayer and carried with four yes votes. Ms. Weber abstained from voting.

NEW BUSINESS:

BA11:032 KENNETH AND JEAN RIESCH REVOCABLE TRUST (OWNERS) KENT JOHNSON (AGENT):

Ms. Bonniwell *I make a motion to deny the request for a variance from the height requirements and deny the request for a special exception from the accessory building floor area ratio requirements of the Waukesha County Shoreland and Floodland Protection Ordinance but approve the request for variances from the shore and floodplain setback*

requirements Ordinance, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report and for the following additional reasons:

Based on the discussion and the testimony and under case law and the code, there is no finding of hardship for a variance from the height requirements and no special conditions of the land to have any additional accessory building floor area ratio.

The motion was seconded by Mr. Schmidt and carried with three yes votes. Ms. Weber and Mr. Bayer voted no.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for a variance from the height requirements and **denial** of the request for a special exception from the accessory building floor area ratio requirements of the Waukesha County Shoreland and Floodland Protection Ordinance but **approval** of the request for variances from the shore and floodplain setback requirements Ordinance, to allow the construction of a new detached garage on the property, subject to the following conditions:

1. As proposed the existing detached garage and the existing shed shall be removed from the property prior to the issuance of a Zoning Permit for the proposed garage construction.
2. The detached garage shall comply with the 3% accessory building floor area ratio maximum allowed in the Ordinance. This will result in detached garage which is approximately 777 sq. ft. in size. It should be noted that an unenclosed carport would not be included in the floor area calculations.
3. The detached garage must comply with the offset and road setback requirements of the Ordinance and must be located at least 30 ft. from the shore and floodplain, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the setback requirements. If a carport is proposed, the offsets and setbacks shall be measured to the outermost edge of the carport.
4. The detached garage must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft.
5. Any area in the upper level of the proposed detached garage that is 7 ft. or more in height as measured from floor to ceiling shall be included in the floor area ratio calculations.
6. A Declaration of Restrictions shall be recorded in the Waukesha County Register of Deeds Office which states that the upper level of the detached garage shall not be used as or converted to a second living unit on the property.

7. Prior to the issuance of a Zoning Permit, a complete set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
8. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed detached garage, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
9. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed detached garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. The grading plan may be combined with the plat of survey required in Condition No. 8.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variance from the height requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The additional height is requested to accommodate a second floor on the detached garage to be used as a "bunkroom." The petitioner's desire for additional living space above the garage does not constitute a hardship. There are no physical limitations of the property that prohibit the compliance with the height requirement and the detached garages on the adjacent lots are one-story structures. The construction of a two-story detached garage which exceeds the height limitations of the Ordinance would not be consistent with the characteristics of the neighborhood and would not be within the purpose and intent of the Ordinance.

As noted above, the petitioners are requesting a special exception from the accessory building floor area ratio requirements of the Ordinance. A special exception is a minor adjustment to the requirements of the Ordinance, owing to special conditions of the property. A special exception differs from a variance in that a special exception does not necessarily require the demonstration of an unnecessary hardship. However, the special exception must be necessary and desirable and must not adversely affect adjacent property owners. When

granting special exceptions, the Board must still consider whether the requested special exception would be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects, and the Board may impose such restrictions or conditions they deem necessary for the protection of adjacent properties and the public interest and welfare. The property exceeds the minimum lot size requirements of the zoning district and the petitioners could construct an approximately 777 sq. ft. detached garage and an unenclosed carport without the need for the special exception. The special exception is not necessary and would not be desirable as it would allow the construction of a garage that would not be in keeping with the characteristics of the neighborhood.

A hardship does exist relative to the shore and floodplain requirements of the Ordinance. The Ordinance does not allow for shore setback averaging for detached structures, therefore, without a variance the garage would need to be constructed 75 ft. from the shore and floodplain. When this setback is applied along with the required road setback, no buildable area exists on the roadside portion of the property. Furthermore, as there is only pedestrian access from the roadside portion of the lot to the lakeside portion, a garage can only be constructed on the roadside portion of the lot. Therefore, there are physical limitations of the property that preclude compliance with the Ordinance requirements. Although the Ordinance does not allow shore setback averaging for detached structures, it should be noted that the existing detached garage on the adjacent lot to the west is approximately 26 ft. from the shore of the channel and the existing detached garage on the adjacent lot to the east is approximately 38 ft. from the shore of the channel. Therefore, the construction of the detached garage at a minimum of 30 ft. from the shore and floodplain on the subject property will be in keeping with the approximate location of the detached garages on the adjacent lots.

The approval of this request, as conditioned, will allow the construction of a detached garage that is in compliance with all Ordinance requirements other than shore and floodplain setback and that is in keeping with the characteristics of the neighborhood. The approval of this request, as conditioned, would be within the purpose and intent of the Ordinance.

BA11:033 LAKE POINT FAMILY LLC c/o BILL AND MARY HYMAN (OWNERS) KEN JOHNSON (AGENT):

Mr. Schmidt did not participate in the public hearing or the deliberations in this matter as he is a neighboring property owner.

Mr. Bayer

*I make a motion to **approve** the request, in accordance with the Staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for

variances from the shore and floodplain setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to allow the construction of a new patio on the lakeside of there residence, subject to the following conditions:

1. The proposed patio shall be located no closer to the shore and floodplain than the existing patio.
2. The total square footage of the proposed patio shall not exceed the square footage of the existing patio unless additional impervious surfaces on the lakeside of the residence (such as the old concrete slab adjacent to the boathouse or the patio approach to the pier at the point) are removed from the property. The patio may then be expanded proportionately to the amount of impervious surface removed, with a maximum patio size not to exceed 1,000 sq. ft. as proposed. The removal of the newly installed concrete connection from the stairway/walkway to the concrete slab adjacent to the boathouse including the new concrete area along the rear of the boathouse, shall not be considered when calculating the allowable area for the proposed patio.
3. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed patio, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, as conditioned, will allow the installation of a new patio on the lakeside of the residence while not further encroaching on the shore and floodplain setback and not further increasing the amount of impervious surface on the site. There is an existing concrete slab adjacent to the boathouse as well as a patio approach to the existing pier at the point on the property that could be removed if additional square footage for the proposed patio is desired. The existing patio was installed when there were no shore and floodplain setback requirements in the Ordinance for patios. To deny shore and floodplain setback variances would be unnecessarily burdensome on the owners as it would preclude them from even replacing the existing patio in its current configuration.

As conditioned, the existing patio could be replaced and reshaped and even expanded if other impervious surfaces are removed from the site. Therefore, the approval of this request, as conditioned, would be in conformance with the purpose and intent of the Ordinance.

BA11:034 PATRICIA A. CATALDO TRUST (OWNER):

Ms. Bonniwell

I make a motion to approve the request for variances from the open space, and remodeling a nonconforming structure in excess of 50% of its fair market value requirements of the Waukesha County Shoreland and Floodland Protection Ordinance for the construction of the 4 ft. overhang on the roadside of the residence and approve the request

for variances from the shore and floodplain setback requirements to allow the construction of a patio on the lakeside of the residence, subject to conditions, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Ms. Weber and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the open space, and remodeling a nonconforming structure in excess of 50% of its fair market value requirements of the Waukesha County Shoreland and Floodland Protection Ordinance for the construction of the 4 ft. overhang on the roadside of the residence and **approval** of the request for variances from the shore and floodplain setback requirements to allow the construction of a patio on the lakeside of the residence, subject to the following conditions:

1. The 4 ft. overhang on the road side of the residence shall not be enclosed.
2. The proposed patio on the lakeside of the residence shall not extend more than 15 ft. from the residence and shall not be located any closer to the side lot lines than the existing residence.
3. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed patio does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of the request for variances from the open space and remodeling a nonconforming structure in excess of 50% of its fair market value will allow the installation of a 4 ft. overhang on the roadside of the residence. The overhang will comply with the locational requirements of the Ordinance, will be located over a permitted deck, and will not be visible from the lakeside of the structure. The property is extremely nonconforming relative to lot size and no structure could be constructed on the property without the need for an open space variance. The structure has previously been granted variances to be remodeled well beyond 50% of its fair market value and it would be unnecessarily burdensome on the owner to deny the request for a variance from the 50% provision for a minor overhang addition.

The approval of the request for variances from the shore and floodplain setback requirements of the Ordinance, as conditioned, will allow the construction of a patio that will not extend closer to the lake than the pre-existing deck. It should be noted that without variances and based on Wisconsin State Statutes, the petitioners could construct a deck at the exposed basement level of the residence as close to the lake as the proposed patio. The proposed patio will be less obtrusive than a deck at this level of the building would be. If a deck that was damaged did not previously exist on the property, a deck or patio could not be constructed on the lake side of the structure without the need for variances. The residence is located as far from the shore and floodplain as possible and the proposed deck will be located approximately 13 ft. above the elevation of the lake. To deny this request, would result in the construction of a deck on the lakeside of the residence that will be more obtrusive and more visible from the lake than the proposed patio. Therefore, the approval of this request, as conditioned, would be in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA11:027 ARLEEN LYNCH:

Mr. Schmidt

I make a motion to modify Conditions No. 4 and 5 of the previous decision, in accordance with the Staff's recommendation, for the reasons stated in the Memorandum with the following modification:

Condition No. 4 shall be modified to read as follows: "The proposed garage must be located at least 5 ft. from the side lot lines and in the location shown on the Plat of Survey dated August 4, 2011. If this should result in the garage being located within the established road right-of-way of Road N, the petitioner must obtain the approval of the Town of Merton Board and must file with the Waukesha County Register of Deeds, an agreement in writing to the effect that the owner will remove all new construction, additions and replacements erected after the adoption of the Ordinance at his or her expense, when said right-of-way is necessary for the improvement of the road. The proposed driveway/pavement area shall be located a minimum of 5 ft. from the south lot line, no closer than the proposed garage. The 5 ft. offset area on the south side of the property shall be vegetated to within 5 ft. of the road right-of-way."

The motion was seconded by Ms. Bonniwell and carried with four yes votes. Ms. Weber voted no.

The Planning and Zoning Division Staff recommendation was that the Board **modify Conditions No. 4 and 5** of their previous decision of approval to read as follows:

4. The proposed garage must be located at least 5 ft. from the side lot lines and in the location

shown on the Plat of Survey dated August 4, 2011. If this should result in the garage being located within the established road right-of-way of Road N, the petitioner must obtain the approval of the Town of Merton Board and must file with the Waukesha County Register of Deeds, an agreement in writing to the effect that the owner will remove all new construction, additions and replacements erected after the adoption of the Ordinance at his or her expense, when said right-of-way is necessary for the improvement of the road. The proposed driveway/pavement area shall be located a minimum of 5 ft. from the south lot line, no closer than the proposed garage. The 5 ft. offset area on the south side of the property shall be vegetated.

5. The detached garage shall be located as far as practicable from the existing oak tree and all recommendations of the Oconomowoc Landscape Supply Center in their correspondence dated August 10, 2011, shall be complied with.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The modification of the Board's previous decision will allow the 400 sq. ft. garage approved by the Board to be constructed. Without the recommended modification to the conditions, the garage would need to be reduced in size to comply with both the increased setback and the separation distance from the oak tree required by the Board. The garage is reasonably sized for the lot and, as noted above, with proper care, the oak tree may remain even with the garage being constructed in close proximity.

Furthermore, the physical location of the proposed garage has not changed, only the proximity to the road right-of-way line. Therefore, the approval of this modification to the Board's previous decision would be within the purpose and intent of the Ordinance.

ADJOURNMENT:

Ms. Weber

I make a motion to adjourn this meeting at 9:00 p.m.

The motion was seconded by Mr. Bayer and carried unanimously.

Respectfully submitted,



Nancy M. Bonniwell
Secretary, Board of Adjustment